

**IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF PENNSYLVANIA**

FERNANDO NUNEZ,
Petitioner,

v.

JOHN E. WETZEL, et al.,
Respondents

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CASE No. 14-cv-2192

PETITIONER'S STATUS REPORT ON CLAIMS FOUR TO SEVEN

Fernando Nunez, by his counsel undersigned, respectfully submits this status report in accordance with the Court's Order of January 17, 2023, regarding the status of exhausting Claims Four through Seven of his pro se habeas petition.

1. In Claim Four of his pro se habeas petition, Mr. Nunez claimed that his sentence of life without parole is unconstitutional under *Miller v. Alabama*, 132 S. Ct. 2455 (2012), and *Montgomery v. Louisiana*, 136 S. Ct. 718 (2016). Based on her reading of the docket in *Commonwealth v. Nunez*, CP-51-CR-402401-2004, and communications with attorneys from the Defender Association of Philadelphia, undersigned counsel believes that the state court judge stated her intention to grant relief on this claim and order a new sentencing hearing. However, the sentence has not yet been vacated and a sentencing hearing has not yet been scheduled. Thus, this claim is still pending at the level of the Court of Common Pleas in Philadelphia County. The last docket entry on the state court docket in this matter was a status hearing of January 24, 2023.

2. Claims Five through Seven of Mr. Nunez's pro se habeas petition involved guilt phase claims, rather than sentencing phase claims. The state PCRA court dismissed these claims as untimely filed, while simultaneously ruling that Mr. Nunez's *Miller* claim was not dismissed and would be further addressed. Mr. Nunez appealed the PCRA court's order to the Superior Court which quashed the appeal because the *Miller* claim was still pending. *Commonwealth v. Nunez*, 272 A.3d 465 (Table) (Pa. Super. Jan. 10, 2022) (No. 1808 EDA 2020) (unpublished disposition). Thus, Mr. Nunez is unable to present his guilt-phase claims to the Superior Court, thereby exhausting those claims, until after his *Miller* claim, including a new sentencing, is fully resolved by the trial court.

3. Undersigned federal habeas counsel for Mr. Nunez will continue to communicate with attorneys at the Defender Association of Philadelphia to monitor the status of Mr. Nunez's *Miller* claim and will file another status report in 30 days.

Respectfully submitted,

DATE: February 28, 2023

/s/ Susan M. Lin
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CERTIFICATE OF SERVICE

I hereby certify that on February 28, 2023, the foregoing Petitioner's Status Report on Claims 4-7 was filed via the Court's CM/ECF system, is available for viewing and downloading, and, as such, was served upon the below counsel:

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